IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.440 OF 2004

IN

SUIT NO.477 OF 2004

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Shri Rajaram S/o Sakharam Chavan ....Plaintiff

v/s.

M/s.Bharat Petroleum Corporation Ltd. & Ors. ....Defendants

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Mr.Mohit P. Jadhav for the Plaintiff.

Mr.R.S.Jaisinghani i/b Mahimtura & Co. for the Defendants Nos. 5 & 6.

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CORAM: D.K.DESHMUKH, J.

DATED: 3RD FEBRUARY,2005

P.C.:

1. This Notice of Motion is taken out by the Plaintiff for interim reliefs. The principal interim relief claimed by the Plaintiff is that the Plaintiff should be permitted to carry out repairs to the suit building.

2. The Motion is opposed by the Defendants. The Plaintiff has filed a suit seeking a decree of declaration that the right, title and interest of Defendants Nos.1 to 3 stands extinguished and it stands vested in the Plaintiff. In short, the Plaintiff claims that he has become owner of the property by adverse possession. In support of his claim the Plaintiff has produced a school leaving certificate which, according to the Plaintiff, shows that he was staying in the premises in the year 1947. The Plaintiff also relies on a notice issued by the Additional Tahsildar, Non-Agricultural Assessment,

Andheri stating that the Petitioner has been using the land in question unauthorisedly for non-agricultural purpose from 1-8-1970. The Plaintiff also relies on a voters' list for the period from December, 1967 to December, 1972, which shows, according to the Plaintiff, that the Plaintiff was resident of the suit premises.

3. Now, so far as the first document is concerned, at best, it will show that the father of the Plaintiff was residing in the suit premises in the year 1947. It will not show either that he was openly in possession or that his possession was hostile and was to the knowledge of the true owner. So far as the second document is concerned, apart from the fact that the Plaintiff himself has not accepted the correctness of the contents of that notice and has not paid the non-agricultural assessment, which was demanded by that notice. At best what that notice will show is that the Plaintiff was using the land which is assessed for agricultural purpose for non-agriculutral purpose without obtaining necessary permission from the Revenue Authority. This document also does not show that the possession of the Plaintiff was hostile or adverse.

So far as the third document is concerned, apart from the fact that there is a dispute between the parties about the authenticity of this document, this document also does not establish that the possession of the Plaintiff was hostile. Thus, there is no material produced by the Plaintiff on record in the form of documentary evidence which will prima facie establish that the Plaintiff was in possession of the suit property adversely to the true owner. In the absence of any documentary proof, therefore, it cannot be said that the Plaintiff has established a prima facie case in his favour that he is likely to get the decree seeking a declaration that the ownership rights of Defendants Nos. 1 to 3 in the suit property are extinguished. As the Plaintiff has not established prima facie case obviously the Plaintiff is not entitled to any order of temporary injunction. That in the suit filed by the Defendant No.1 in the City Civil Court either the City Civil Court or this court in Appeal has passed some interim order will not be any justification for granting the interim order which the Plaintiff is seeking in this suit, without the Plaintiff establishing a strong prima facie case in his favour. At the ad-interim stage of notice of motion, a statement was made on

behalf of the Defendants Nos. 4, 5, & 6 that the Defendants Nos. 4, 5 & 6 are willing to carry out repairs if found necessary at their own expenses and the Plaintiff was to indicate to the Defendants Nos. 4, 5 & 6 the nature of repairs that are to be carried out. A complaint is made on behalf of the Defendants Nos. 4, 5 & 6 that to this date the Plaintiff has not written to the Defendants Nos. 4, 5 & 6 pursuant to the order dated 24th March, 2004. A further complaint is also made on behalf of the Defendants Nos. 4, 5 & 6 that the Plaintiff has carried out modification in the suit building unauthorisedly.

4. Taking overall view of the matter, therefore, in my opinion, the Plaintiff is not entitled to any interim relief and the Defendants Nos. 4, 5 & 6 are also entitled to have relieved from the statement that they have made. It is accordingly so ordered. Notice of Motion disposed of.

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